

SERVED: April 28, 1994

NTSB Order No. EA-4151

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of April, 1994

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12554
v.)	
)	
FRANK ELSTON, JR.,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the written initial decision of Administrative Law Judge Jerrell R. Davis, served November 5, 1992, after a hearing held September 3, 1992.¹ In that decision, the law judge denied respondent's motion to dismiss the Administrator's complaint, as well as respondent's motion to strike the Administrator's response to that motion; affirmed the

¹ Attached is a copy of the initial decision.

charged violations of 14 C.F.R. 61.15 and 67.20(a)(1);² and modified the sanction from a 180-day suspension of respondent's private pilot certificate to one of 60 days.³ Respondent's motion to dismiss was based on, among other things,⁴ the Administrator's alleged failure to comply with our stale

² Section 61.15 of the FAR states, in pertinent part:

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs is grounds for --
* * *

(2) Suspension or revocation of any certificate or rating issued under this part.

Section 67.20(a)(1) provides as follows:

§ 67.20 Applications, certificates, logbooks, reports, and records: Falsification, reproduction, or alteration.

(a) No person may make or cause to be made --

(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part.

³ The Administrator has not appealed from the reduction in sanction.

The Administrator sought no suspension or revocation of respondent's medical certificate, as that certificate had long since expired at the time this action was commenced.

⁴ In addition, respondent argued that the complaint should be dismissed because: 1) his conviction resulted in a deferred sentence and was subsequently expunged; 2) the medical application form is fundamentally ambiguous; and 3) this action is barred by the doctrine of laches.

complaint rule (49 C.F.R. 821.33(a)).⁵ Respondent appeals from the law judge's decision in all respects. Because we find that the law judge should have granted respondent's motion to dismiss the complaint as stale, we need not address respondent's remaining arguments.

On March 23, 1984, respondent pled guilty to, and was convicted of, possession of approximately ten ounces of marijuana and, as a result, was sentenced to three years' probation, a fine of \$750, court costs of \$50, and 50 hours of community service. On August 28, 1986, respondent failed to report this conviction on his application for airman medical certification.⁶ Respondent

⁵ Section 821.33 provides, in pertinent part:

§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint.

* * *

[The Administrator has made no claim in this proceeding that respondent lacks qualification.]

⁶ The application form asks whether the applicant has a record of traffic, and other, convictions.

was first notified of this proposed certificate action on March 8, 1990 -- approximately three and one half years after the alleged section 67.20(a)(1) falsification violation, and some six years after the conviction which underlies the section 61.15 charge. It is undisputed that the FAA security office which initiated this enforcement action had information concerning respondent's alleged violations at least one year prior to issuing that notice.⁷

The law judge held that the Administrator had not exercised due diligence in processing this case and, therefore, no good cause had been shown under our stale complaint rule for the delayed notice to respondent.⁸ However, based on his "review of Board decisions dealing with drug convictions and falsification," the law judge concluded that "the imposition of a sanction is warranted in the public interest notwithstanding the delay or the reasons therefor." (Initial decision at 6.) We disagree.

The public interest exception to our stale complaint rule has not been used to exempt whole categories of cases from the notice requirements of the rule. To the contrary, we have made clear that we will evaluate "the nature of the alleged violations

⁷ The Administrator's witnesses explained that this one year delay was due to a combination of the publicized "amnesty" period -- during which airmen were given an opportunity to avoid enforcement actions based on prior falsifications by voluntarily coming forward and correcting false statements made on medical applications -- and difficulties in obtaining respondent's current address.

⁸ The Administrator does not challenge this finding on appeal.

in a specific case and their actual impact on air safety" in determining whether the exception should apply. Administrator v. Booth, 6 NTSB 212, 214 (1988).⁹ Only when a case implicates a unique or unusual overriding public interest, or involves violations which are exceptionally egregious or aggravated, would we be likely to find the public interest exception applicable. Administrator v. Booth, supra. Nothing in this record indicates the existence of such an overriding public interest. Nor can we conclude, especially in light of the moderate sanction sought in this case,¹⁰ that respondent's violations are so egregious or aggravated that imposition of a sanction is warranted in the public interest notwithstanding the Administrator's prosecutorial delay. We therefore reverse the law judge's denial of respondent's motion to dismiss the complaint as stale.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted;
2. The initial decision is reversed; and
3. The order of suspension is dismissed.

VOGT, Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

⁹ See also Administrator v. Zanolunghi, 3 NTSB 3696, 3698 n. 3 (1981) (assertion that respondent's conduct allegedly endangered persons and property is insufficient to invoke the public interest exception).

¹⁰ As already noted, the Administrator did not object to the law judge's modification of the 180-day suspension to one of 60 days.